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SUPERIOR COURT OF NEW JERSEY
DEPARTMENT OF LAW & PUBLIC SAFETY
DIVISION OF CONSUMER AFFAIRS
STATE BOARD OF DENTISTRY

IN THE MATTER OF THE SUSPENSION
OR REVOCATION OF THE LICENSE OF

JOHN J. CARCHMAN, D.D.S.
License No. DT6455

TO PRACTICE DENTISTRY IN THE
STATE OF NEW JERSEY

ADMINISTRATIVE ACTION

ORDER OF TEMPORARY
SUSPENSION OF LICENSURE

This matter was opened to the New Jersey State Board of Dentistry (hereinafter, "the Board"), upon the application for a temporary suspension of licensure on the filing of an Order to Show Cause, Verified Complaint, Notice of Hearing and Notice to File Answer by John J. Farmer, Jr., Attorney General of New Jersey, Hakima Bey-Lawson, Deputy Attorney General, appearing (hereinafter "Petitioner"), against, John J. Carchman, D.D.S. (hereinafter, "Respondent"). The Order to Show Cause was signed by Barbara Rich, D.D.S., Board President on July 11, 2001 scheduling the matter to be heard at the following Board meeting of July 18, 2001.

The Order to Show Cause, Verified Complaint, Notice of Hearing and Notice to File Answer were served upon the respondent setting forth the charges. Although no answer was filed by the respondent, he appeared with counsel at the hearing. The emergent application regarding the temporary suspension was heard by the full Board of Dentistry at its regularly scheduled meeting of July 18, 2001.

The Verified Complaint in this matter alleged that the continued practice of dentistry by the respondent represented a clear and imminent danger to the public health, safety and welfare and thus constituted a basis for temporary suspension or limitation of licensure pursuant to N.J.S.A. 45:1-22.

Specifically, on July 20, 1994 a Consent Order was filed by the Board which ordered the respondent to pay a \$1,500.00 civil penalty and costs for maintaining a dental office that deviated from accepted sanitary conditions. Thereafter, on August 20, 1999, October 30, 2000, April 2, 2001 and May 18, 2001 Investigators Cyndy M. Gohl and Deborah Wacker appeared at respondent's dental office and observed floors that were dirty, dingy, old and stained. Investigator Gohl further observed a brown/yellowish type stain surrounding a dental chair, that the waiting room was cluttered and the carpet stained. She also observed cobwebs, paint scraped from walls, dirty and stained ceilings, unclean refrigerators, a rusty sink, dirty cabinets, a broken dental light, exposed electrical

wires in the ceiling, stained liners in drawers, lack of face shields, emergency kits, dusty walls, and windows with dust build-up.

The Verified Complaint further set forth that the respondent's New Jersey Controlled Dangerous Substance Registration (#D059172) had expired in 1998 but that respondent issued prescriptions on diverse dates from January 1999 to March, 2001 including Norco, Oxycatin, Methadone, Vicodin ES, Valium, Klonopin and Percocet to patients despite not having a current registration.

Moreover, the Verified Complaint alleged that on April 21, 2001, Investigator Cyndy Gohl served a Demand for Records and a Statement in Writing under Oath. The Demand directed respondent to produce dental records of patients by April 16, 2001 and submit a written statement concerning respondent's rendition of dental services. Respondent failed to comply with the directive.

Deputy Attorney General Hakima Bey-Lawson presented the matter on behalf of the State. Respondent was represented by Pamela Mandel, Esq.

The Deputy Attorney General summarized the basis upon which the application was grounded:

- (a) Respondent's dental office was maintained without adherence to appropriate sanitary practices constituting gross and repeated acts of negligence, professional misconduct and demonstrating a clear and imminent danger to the public health, safety and welfare.
- (b) Respondent's nature and quantity of prescribing of Controlled Dangerous Substances, while also failing to

renew his New Jersey Controlled Dangerous Substance registration, constituted professional misconduct. Respondent's actions further demonstrated a clear and imminent danger to the public health, safety and welfare.

- (c) Respondent's failure to submit a written statement under oath concerning his rendition of dental services to patients and his failure to produce dental records for patients violated the Board's Duty to Cooperate regulation and was in violation of the Board's patient records regulation. Respondent's conduct demonstrated gross and repeated acts of negligence. Respondent's conduct further demonstrated professional misconduct.

In support of the application, the Deputy Attorney General introduced into evidence exhibits P-1 through P-25. P-1 through P-18 were the exhibits attached to the Verified Complaint. P-19 through P-25 were the original patient records that were produced at the hearing in response to the Demand for Production served on the respondent in April, 2001. That Demand requested three (3) additional records, which records were not produced. R-1 in evidence was a letter from respondent's physician which indicated that the respondent's medical condition had impacted upon the respondent's ability to handle his personal affairs.

Counsel for the respondent, by way of opening remarks, conceded that respondent's office was unsanitary and requested additional time to initiate appropriate sanitary measures. She argued, however, that the Deputy Attorney General failed to meet her burden in showing imminent danger. Counsel represented that the respondent posed no threat to the public. Counsel maintained that if respondent posed a real threat to the public, then the

Attorney General's Office would have taken action more quickly. Respondent's counsel further represented that the respondent was not able to take the necessary corrective action to sanitize his dental office in time and was too busy to look for and forward patient records to the Board. Respondent's counsel also asserted that he did not know that he could not prescribe medication because although he did not have a State registration, he held a Federal registration to prescribe Controlled Dangerous Substances.

In an attempt by the Deputy Attorney General to introduce evidence of the substances prescribed, respondent's counsel objected to the introduction of this evidence and all questions relating to any of Respondent's prescribing habits.

Respondent testified during the hearing regarding the equipment and sterilization procedures in his office, his current medical condition and his schedule which was 28-30 patients per day, 5-6 days per week in his offices. He further testified that he did not keep patient records for his wife and son, for whom prescriptions were written.

Respondent further testified that he has numerous health and financial difficulties and had not always maintained full supervision and control over his practice.

The Board rejected respondent's argument to allow him additional time, without licensure suspension or limitation, to voluntarily place his dental office in a sanitary condition.

Respondent had notice and ample time to adhere to acceptable dental practices, particularly in light of the fact that there were several inspections conducted on the premises, at various times, and Respondent did nothing. Respondent had then requested the Board to give him even more time for compliance. This remedy, however, did not address the primary concern of the Board of Dentistry - the protection of the public interest from any risk of harm.

The preliminary proofs submitted by the Deputy Attorney General established not only deviations from accepted sanitary practices which pose a risk to the public, but also included patient records which revealed extensive prescribing - notwithstanding a lack of current authority - of a nature and quantity which was alarming. Such proofs were evidence of respondent's flawed judgment, lack of control and breach of professional standards.

From the totality of the evidence presented, it appeared to the Board that Dr. Carchman was not in control of his practice. He permitted unsanitary conditions to exist, failed to ensure appropriate sterilization of his equipment and abdicated ultimate responsibility for vital functions of his office to others. His failure to attend to the requirements related to his CDS registration is similarly emblematic of his lack of control.

Moreover, the Board could not ignore the evidence submitted in support of the relief sought. Exhibit P-18 listed prescriptions written by respondent. The quantity and type of medications prescribed gave rise to a level of extreme concern regarding the efficacy of the prescriptions. Further, the Board noted that the prescriptions included those written for family members.

In the absence of any explanation for these prescriptions, and given the existence of continued unsanitary conditions, the Board found that the Deputy Attorney General met the burden of showing that the continued practice by respondent palpably demonstrated a clear and imminent danger to the public health, safety and welfare and that a temporary suspension of Respondent's license, pending further hearings, was warranted.

The Board, having carefully considered the testimony, documentary evidence and arguments of counsel and having determined that the within disposition is adequately protective of the public health, safety and welfare,

IT IS on this 1st day of August, 2001

ORDERED that:

(1) Respondent's license to practice dentistry in the State of New Jersey is hereby temporarily suspended effective July 18, 2001 pending disposition after plenary proceedings.

(2) Respondent shall immediately provide to the Division of Consumer Affairs, Enforcement Bureau, his license and prescription pads.

NEW JERSEY STATE BOARD OF DENTISTRY

By Barbara Ann Rich, D.D.S.
Barbara Rich, D.D.S.
Board President

Dated: 8-1-01

**DIRECTIVES APPLICABLE TO ANY DENTISTRY BOARD LICENSEE
WHO IS SUSPENDED, REVOKED OR WHOSE SURRENDER OF LICENSE
HAS BEEN ACCEPTED**

A practitioner whose license is suspended or revoked or whose surrender of license has been accepted by the Board, shall conduct him/herself as follows:

1. Document Return and Agency Notification

The licensee shall promptly deliver to the Board office at 124 Halsey Street, 6th floor, Newark, New Jersey 07102, the original license and current biennial registration certificate, and if authorized to prescribe drugs, the current State and Federal Controlled Dangerous Substances Registration. With respect to suspensions of a finite term, at the conclusion of the term, the licensee may contact the Board office for the return of the documents previously surrendered to the Board.

2. Practice Cessation

The licensee shall cease and desist from engaging in the practice of dentistry in this State. This prohibition not only bars a licensee from rendering professional services, but also from providing an opinion as to professional practice or its application, or representing him/herself as being eligible to practice. Although the licensee need not affirmatively advise patients or others of the revocation, suspension or surrender, the licensee must truthfully disclose his/her licensure status in response to inquiry. The disciplined licensee is also prohibited from occupying, sharing or using office space in which another licensee of this Board provides health care services. Unless otherwise ordered by the Board, the disciplined licensee may contract for, accept payment from another licensee for or rent at fair market value office premises and/or equipment. In no case may the disciplined licensee authorize, allow or condone the use of his/her provider number by the practice or any other licensee or health care provider. In situations where the licensee has been suspended for less than one year, the licensee may accept payment from another professional who is using his/her office during the period that the licensee is suspended, for the payment of salaries for office staff employed at the time of the Board action.

A licensee whose license has been revoked, suspended for one (1) year or more or permanently surrendered must remove signs and take affirmative action to stop advertisements by which his/her eligibility to practice is represented. The licensee must also take steps to remove his/her name from all prescription blanks and pads, professional listings, telephone directories, professional stationery, or billings. If the licensee's name

is utilized in a group practice title, it shall be deleted.

Prescription pads bearing the licensee's name shall be destroyed. A destruction report form shall be obtained from the Office of Drug Control (973-504-6558) and filed with that office. If no other licensee is providing services at the practice location, all medications must be removed and returned to the manufacturer (if possible), or destroyed or safeguarded. In situations where the licensee has been suspended for a period of less than one year, prescription pads and medications must be secured in a locked place for safekeeping.

3. Practice Income Prohibitions/Divestiture of Equity Interest in Professional Service Corporations

A licensee shall not charge, receive or share in any fee for professional services rendered by him/herself or others while barred from engaging in the professional practice. The licensee may be compensated for the reasonable value of services lawfully rendered and disbursements incurred on a patient's behalf prior to the effective date of the Board action.

A licensee whose license is revoked, surrendered or suspended for a term of one (1) year or more shall be deemed to be disqualified from the practice, and shall be required to comply with the requirements to divest him/herself of all financial interest in the professional practice pursuant to Board regulations contained in N.J.A.C. 13:30-8.21. Such divestiture shall occur within 90 days following the entry of the Board Order. Upon divestiture, a licensee shall forward to the Board a copy of documentation forwarded to the New Jersey Department of Treasury, Commercial Reporting Division, demonstrating that the interest has been terminated. If the licensee is the sole shareholder in a professional service corporation, the corporation must be dissolved within 90 days of the licensee's disqualification.

4. Patient Records

If, as a result of the Board's action, a practice is closed or transferred to another location, the licensee shall ensure that during the three (3) month period following the effective date of the disciplinary order, a message will be delivered to patients calling the former office premises, advising where records may be obtained. The message should inform patients of the names and telephone numbers of the licensee (or his/her attorney) assuming custody of the records. The same information shall also be disseminated by means of a notice to be published at least once per month for three (3) months in a newspaper of general circulation in the geographic vicinity in which the practice was conducted. At the end of the three month period, the licensee shall file with the Board the name and telephone number of the contact person who will have access to patient records of former patients. Any change in that individual or his/her telephone number shall be promptly reported to the Board. When a patient or his/her representative requests a copy of his/her patient's record or asks that the record be forwarded to another health care provider, the licensee shall promptly provide the record without charge to the patient.

5. Probation/Monitoring Conditions

A disciplined practitioner whose active suspension of license has been stayed in full or in part, conditioned upon compliance with a probation or monitoring program, shall fully cooperate with the Board or its designated representatives, including the Enforcement Bureau of the Division of Consumer Affairs, in ongoing monitoring of the licensee's status and practice. Such monitoring shall be at the expense of the disciplined practitioner.

(a.) Monitoring of practice conditions may include, but is not limited to, inspection of professional premises and equipment, and inspection and copying of patient records (confidentiality of patient identity shall be protected by the Board) to verify compliance with Board Order and accepted standards of practice.

(b.) Monitoring of status conditions for an impaired practitioner may include, but is not limited to, practitioner cooperation in providing releases permitting unrestricted access to records and other information to the extent permitted by law from any treatment facility, other treating practitioner, support group or other individual or facility involved in the education, treatment, monitoring or oversight of the practitioner, or maintained by the rehabilitation program for impaired practitioners. If bodily substance monitoring has been ordered, the practitioner shall fully cooperate by responding to a demand for breath, blood, urine or other sample in a timely manner and by providing the designated sample.

6. Reports of Reimbursement

A disciplined practitioner shall promptly report to the Board his/her compliance with each directive requiring monies to be reimbursed to patients to other parties or third party payors or to any Court.

7. Report of Changes of Address

A disciplined practitioner shall notify the Board office in writing within ten (10) days of change of address.

NOTICE OF REPORTING PRACTICES OF BOARD
REGARDING DISCIPLINARY ACTIONS

Pursuant to N.J.S.A. 52:14B-3(3), all orders of the New Jersey State Board of Dentistry are available for public inspection. Should any inquiry be made concerning the status of a licensee, the inquirer will be informed of the existence of the order and a copy will be provided if requested. All evidentiary hearings, proceedings on motions or other applications which are conducted as public hearings and the record thereof, including the transcript and documents marked in evidence, are available for public inspection upon request.

Pursuant to Public Law 101-191, the Health Insurance Portability and Accountability Act, the Board is obligated to report to the Healthcare Integrity and Protection Data Bank any adverse action relating to a dentist:

- (1) Which revokes or suspends (or otherwise restricts) a license; or
- (2) Which censures, reprimands or places on probation, or restricts the right to apply or renew a license; or
- (3) Under which a license is surrendered.

In accordance with an agreement with the American Association of Dental Examiners, a report of all disciplinary orders is provided to that organization on a monthly basis.

Within the month following entry of an order, a summary of the order may appear on the public agenda for the monthly Board meeting and is forwarded to those members of the public requesting a copy. In addition, the same summary will appear in the minutes of that Board meeting, which are also made available to those requesting a copy.

On a periodic basis the Board disseminates to its licensees a newsletter which includes a brief description of all of the orders entered by the Board. In addition, the same description may appear on the Internet Website of the Division of Consumer Affairs.

From time to time, the Press Office of the Division of Consumer Affairs may issue releases including the summaries of the content of public orders.

Nothing herein is intended in any way to limit the Board, the Division or the Attorney General from disclosing any public document.